Petition: Amendment of Part 97 of the Commission's Amateur Radio Service Rules to Overcome Amateur Radio Antenna Restrictions

This Petition supersedes my file (confirm number 250502201638701686): Jamison Petition Antenna Restrictions February 19 2025; submitted February 20, 2025, which was not double-spaced. This file is unchanged and double-spaced as required.

Petitioner - *Pro se*: Danny G. Jamison, Amateur Radio Operator AH6FX: I am a "pro se" Petitioner without attorney representation in this matter. Accordingly, I respectfully ask the Commission to provide special considerations to ensure I have a fair opportunity to present my Petition. While I must follow the same rules and procedures as licensed attorneys, I ask the Commission to offer some leniency in interpreting my Petition, and provide other assistance and consideration as appropriate. I respectfully ask the Commission to focus more on the substance of the Petition rather than strict adherence to form.

Table of Contents

Petition for Rulemaking 2
Summary 2
I. Extremely Complex Problem 5
II. Indulgence 9
III. Background 9
IV. Introduction - The Hidden Value of the Amateur Radio Services 11
V. Interference from Homeowner's Associations and CC&Rs – Overview 18
VI. HOA One-Sided Contracts 20
VII. Motive to Control Domain Using Legally-Deficient and One-Sided Contracts ... 21
VIII. No Legal Basis for Antenna Restrictions 26
IX. Some HOAs are Monopoly-like Entities and Create Monopolistic Conditions 28
X. Disproving the Protected Status Assumption 30
XI. Primacy of 47 CFR 97 Over State Law and Homeowner's Association Contracts . 32
XII. PRB-1 Observations and Presumptions 32
XIII. Conflict between Contract and Regulatory Law 36
XIV. No Other Available Methods to Transmit Amateur Radio Service Communications 40
XV. Harm to Amateur Radio Operators 40
XVI. The Justification for Amending Part 97 of the Commission's Amateur Radio Service Rules to Overcome HOA et al Amateur Radio Antenna Restrictions 43
XVII. How The Interests Of The Petitioner Will Be Affected 43
Appendix 1, Primacy of 47 CFR 97 Over State Law or Homeowner's Association Rules, et al 45
Appendix 2, Selected Legal Proceedings Related to Rule Making and Amateur Restrictions 49
Appendix 3, Part 97, Subpart D of the Amateur Service Rules is amended at Sections 97.3 establishing new definitions, and at 97.15 allowing antenna structures, and suggesting amend to 47 USC §151 as indicated below 52

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 97 of the Commission's	)	Docket # - _____
Amateur Radio Service Rules to Overcome	)	
Amateur Radio Antenna Restrictions	)	Rule Making # - PRB-1

To: The Chief, Wireless Telecommunications Bureau
Via: Office of the Secretary

PETITION FOR RULEMAKING

I, Danny G. Jamison, Amateur Radio Operator AH6FX, pursuant to Title 47, Chapter 1, Subchapter A, Part 1, Subpart C, Section 1.407 of the Commission's Rules (*47 CFR §1.407*) whereby the Commission determines this Petition discloses sufficient reasons in support of this action to justify the institution of a rulemaking proceeding, and determines a notice and public procedure thereon are not required; hereby respectfully request the Commission issue a *Final Order* amending Section 97.3 and Section 97.15 of the Commission's rules as specified in *Appendix 3* attached hereto. If unfeasible to issue a *Final Order*; then in pursuant to Section 1.401 of the Commission's Rules (*47 CFR §1.401*), I respectfully request the Commission issue a *Notice of Proposed Rule Making* proposing amendments to Section 97.3 and Section 97.15 of the Commission's rules as specified in *Appendix 3* attached hereto. Request issuance of the *Notice* at the earliest date.

Summary.

The Petitioner recognizes that much litigation has occurred over the last few decades in local, state, and Federal courts attempting to reverse or nullify or overturn *antenna restrictions placed on certain amateurs,* thereby restricting the operation of their amateur radio stations and limiting their Federal license privileges. These restrictions apply still today to certain Federally licensed amateur radio operators, forbidding or limiting use or construction of certain integral elements of

their amateur stations[1,2]. Some compromise decisions were made over the decades. Additionally, the Commission issued PRB-1 in 1985 (with subsequent revision), which, however, did not relieve said antenna restrictions.

The Petitioner argues that new facts have emerged through analyzing various actions and circumstances, and analyzing certain elements of contract law, regulatory law, statutory law, and Constitutional law. This Petition presents new facts and circumstances, and demonstrates the issue of concern is not the antenna restrictions placed on licensees, but the real problem is very complex. The problem is unobvious and hidden from most litigants as the judicial history of failed attempts illustrates. Most litigation focused on contractual agreements, which are not the problem.

The problem arises from a conflict of legal jurisdiction or conflict of laws because the legal issue involves multiple jurisdictions with conflicting laws. By that, we see state or local courts ruling on contractual matters, and rightly so. But the actual problem relates to the enforcement of a *Federally* granted allowance under § 97.15 Station antenna structures and Part 97 in general, as appropriate, which is a Federal matter and under the purview of the Commission. The Commission's regulatory rules and regulations are Federal laws which constitute the "supreme Law of the Land," and shall not be usurped by any form of contract, i.e. as in neighborhood covenants, conditions, and restrictions. The Commission's rules represent the full force and

[1] 47 CFR § 97.3 Definitions: A station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications.
[2] 47 U.S. Code § 153 – Definitions: The term "amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

effect of Federal law, and are *superior neighborhood contracts*, taking precedence over lower authority laws and take precedence over private agreements like neighborhood contracts, in this case.

The Petitioner respectfully challenges the rationale of certain elements within the *PRB-1* decision. Analysis has revealed new facts which cause reconsideration of Part 97.

Arguments contained herein are substantially different from those presented by previous petitioners and litigators throughout the hierarch of our court system. The Petitioner's argument is not repetitious of other petitions. This Petition relies on facts relating to the legal basis of contracts on which most antenna restrictions are established.

The Petitioner concludes past litigation focused on the *symptom*, which is not the problem. The symptom is that seemingly-legal contracts emplaced antenna restrictions. The *real problem* is maintaining the "Law of the Land" and negating legally-deficient contracts, or portions thereof. Federal law, i.e. the Code of Federal Regulations has precedence over such individual contracts dealing with antenna restrictions. The Commission gives to licensees both station and operator privileges; but today, private contacts are taking some of those privileges away. That is not legally sound.

The Petitioner asks why there are amateur radio antenna restrictions. Additionally, the Petitioner challenges the "protected status" of HOA skylines.

Finally, the Petitioner respectfully requests the Commission to amend Part 97 as illustrated in Appendix 3 to overcome certain unlawful restrictions placed on the employment of amateur radio antennas. The Petitioner also requests administrative changes to Part 97 and 47 USC.

In support of my Petition, I state as follows:

I. Extremely Complex Problem.

1. Over the last few decades, a number of legal actions were brought forth in various courts by various amateur radio licensees and organizations to overcome homeowner association-imposed antenna restrictions. Though compromises were made in some cases, the widespread problem remains. Why were litigants unsuccessful?

2. Also, concerned parties enlisted U.S. Congressional sponsors who attempted to introduce legislative bills. Most bills never made it out of conference, however, there was some success at the state level that provided some relief or compromise to antenna restrictions. Why do these bills die in conference?

3. Others petitioned the Commission, but their petitions designed to invalidate community association covenant restrictions applicable to the installation of various radio antennas and support structures, were rejected. Each time, the Commission reaffirmed its long-standing position that the Commission should not interfere with community association covenants, which the Commission recognizes as private contractual agreements under

state law. In that regard, the Commission likely maintained the position that those actions attempted to circumvent community rules and take decision-making authority away from community association homeowners, thus degrading the underlying concept of community association governance.

a. The Petitioner, concurs with the Commission's decisions on those matters dealing with those individual contractual matters. That is not the issue of the Petitioner and that is not the problem.

4. *Problem*. The *problem* is unobvious and hidden from most litigants as the judicial history of failed attempts illustrates. As mentioned above, most litigation focused on contractual agreements, which are not the problem.

a. The ***problem is***: amateur radio licensees granted privileges by the Commission, a Federal regulatory agency; have some of those privileges usurped or taken away by non-governmental entities such as homeowner's associations. The problem encompasses those portions of restrictive covenants that are counter to Federal rules and regulations, therefore, they are legally-defective instruments and are invalid; as this Petition illustrates below.

5. *Complexity* - problems within the primary problem relate to:

a. *Jurisdictions*: A conflict of legal jurisdiction or conflict of laws arise because the legal issue involves multiple jurisdictions with conflicting laws. By that, we see state or local courts ruling on *contractual* matters, and rightly so. But the actual problem relates to the enforcement of a *Federally* granted allowance under § 97.15 Station antenna structures[3], which is a Federal matter and under the purview of the Commission, whose regulatory rules and regulations are Federal laws and constitute the "supreme Law of the Land." Obviously, the Commission's rules and regulatory complains are heard in Federal court – not state or local courts.

b. *Conflict of Laws*. Consequentially because of the conflict of laws, for example; we see the duly licensed amateur operator being fine by a homeowner's association for erecting a 50 foot tower on his property, and being served a tower removal order. It is unjust and unreasonable to penalize a licensee for exercising a lawfully granted Federal right or permission. That is one of several consequences or damages related to the problem. The conflict of law is between state *contract* law or business law (by and large not statutory law) vs. Federal law.

c. *Misunderstood Legislative History*: Few prior litigants have understood or discerned or argued the conflict of jurisdictions and the conflict of laws. Importantly, in the legislative history we see the Commission refusing to circumvent community rules in this matter. Prior litigants may not have

[3] And Part 97 in general

appreciated this fact, and failed to investigate the legal soundness of the homeowner's association rules which are a *form of contrac*t. Consequentially, many previous litigators attempted to solve the wrong problem.

d. *Protected Status Assumption*. Further, no legislative history was found challenging the "status" of antenna restrictions in addition to their legal basis. Prior litigants seemingly accepted a "protected statues" of HOA skylines. The Petitioner challenges this unchallenged "protected statues."

e. The Petitioner eliminated the complexity of this issue through analysis, and defined the problem. See below.

6. The Commission may agree this is an extremely complex legal problem involving, importantly and significantly, the requirement to consider the fundamental principles of the U.S. legal system maintaining Federal precedence over any conflicting state law, local ordinances, or private agreements; and considering various jurisdictional issues.

7. Case law, Federal law, and Constitutional law support this Petition.

8. Therefore, the Petitioner relates below, non-speculatively, new facts and circumstances bearing on the problem of antenna restrictions. The Petitioner's arguments are substantially different from those presented by previous petitioners and litigators.

II. **Indulgence**.

1. Partly because of the complex nature of this problem, the Petitioner *pro se* asks for the Commission's indulgence in the legal construct of this Petition. It may be somewhat verbose by necessity. However, because of the importance and extremely complex nature of the problem, and since many skilled litigators and previous petitioners have been unsuccessful in achieving their desired results, I ask the Commission's patience as the Petitioner presents some fundamental but often overlooked or unconsidered facts and considerations bearing on this problem. Various synopses below demonstrate the hidden value of the amateur radio service, address homeowner's association interference, demonstrate some HOAs are monopoly-like entities, emphasize primacy of 47 CFR 97 over state law or homeowner's association rules, question why HOA skylines are protected, and highlight how certain relevant legal issues impact on this complex problem; all points showing harm to licensees who do not receive equal treatment under the law.

2. All of these circumstances bear on the problem and help provide a comprehensive understanding of the problem and justify my simple amendment to Part 97.

III. Background.

1. Without proper authority, various non-Federal governmental entities have placed unreasonable and highly restrictive measures on certain Federally licensed amateur radio

operators and on the construct of their amateur radio stations. Specifically, unlawful antenna restrictions preclude some amateur radio operators from constructing, erecting, and employing various antennas of all types including antenna masts, towers, poles, and other antenna supporting means and apparatuses. These antenna restrictions are in clear violation of Part 97 which establishes official rules and procedures for the Amateur Radio Service. Importantly, Part 97 grants to amateur radio certain legal authorizations and privileges.

2. Further, non-Federal government entity restrictions thereby prevent the growth and supply of trained, experienced, and qualified radio operators who support Federal, state, tribal, and local governments during certain emergency situations. Said restrictions are perhaps unlawful, impractical, and unreasonable; and violate the grant of radio operating privileges specified in Federal law. Said restrictions make virtually impossible, or prevent certain amateur radio operators from enjoying and exercising all rights and privileges granted under Part 97.

3. I propose amending Section 97.3 and Section 97.15 of the rules to remove and / or preclude radio antenna restrictions emplaced by non-Federal government entities.

4. In support of my Petition, I state as follows:

IV. Introduction - the hidden value of the amateur radio service.

1. *Victims Who Suffer the Harm.* In most associated litigation relative to this problem, little was mentioned about the value of amateur radio operators who are the victims of such restrictions and litigation, and suffered harm. Therefore, let it be known that amateur radio operators are valuable to our communities and Nation. They are more than hobbyists who communicate worldwide daily. Amateurs have valuable skills developed over years of experience, and have spent an enormous amount of time and money establishing and maintaining various amateur radio networks – both brick and mortar and cyber. These networks are part of our national communications backbone, and were utilized to temporarily replace networks destroyed in recent hurricanes and wildfires.

2. *Trained Amateur Radio Operator*. The history of amateur radio in the United States is well documented, but it is essential to recognize the major over-arching contribution of amateur radio to the United States. It is more than a multitude of radio operators contacting other amateurs in various countries throughout the radio spectrum, every day. It is unobvious to many of what essential American capability is lost forever when non-Federal Government entities usurp the Commission's rules and procedures and restrict the employment of an essential component of an amateur radio station – the antenna system. That American capability is the *trained amateur radio operator*. Loss of antenna usage puts amateur stations off-the-air, and decreases the number of trained radio operators to support emergency operations.

a. In the early 20th century radio hobbyists were often referred to as wireless telegraphers or amateur wireless operators. They built their own equipment and antenna systems. They did the electrical engineering to build receivers and transmitters, and did the geometry and engineering, and constructed antenna towers and strung antenna wires. They delved into the world of physics and made some of the first scientific observations of matter and energy, and their actions within the electromagnetic sphere. The Federal government eventually licensed these radio enthusiasts.

b. However, in April 1917 they were ordered to cease operations and dismantle their stations as the United States entered World War I.

    i. The military had an urgent requirement for not only radio operators, but also for radio networks. Some of the pre-war amateur radio operators were specially recruited by the military, while others joined or were drafted.

    ii. The military obviously had tremendous communications requirements and had relatively few trained service members skilled in the art. Many amateur radio operators served as Morse code communicators, others trained recruits in communications specialties, others used their knowledge of electronics to fix and maintain equipment, while others planned and established large communications networks in Europe and the

United States. Some amateurs became Morse code intercept operators as the field of signal intelligence operations developed.

iii. Importantly, the United States began developing a national capability and inventory of trained communicators, electronic repair people, and communications network planners and maintainers. *This is an essential national capability for any country.*

c. Similarly in the mid-20th century, the Government took control of all radio communications to support the World War II effort. Amateur radio licenses were suspended. As in World War I, amateur radio operators used their skills in support of the war efforts. Our national capability and inventory of trained communicators, electronic repair people, and communications network planners and maintainers expanded. This trend continued through the Global War on Terrorism, but our inventory of trained and experience communicators is decreasing not only because of computerization.

d. Now in the 21st century, every year and every season of the year, our nation is challenged by natural and man-made disasters. The Federal Emergency Management Agency (FEMA) publishes the *National Response Framework* which is a guide to how the nation responds to all types of disasters and emergencies. Amateur radio operators play crucial roles in supporting FEMA, and state and local emergency management agencies during disasters and

emergencies. Almost every state and territory has amateur volunteer organizations who have entered into memorandum of support agreements for emergency and disaster support.

i. One of several emergency support efforts is ARES (Amateur Radio Emergency Service) which is a network of trained and organized amateur radio operators who volunteer to provide communications support during emergencies. They work closely with FEMA, local governments, hospitals, and disaster response organizations. Especially with recent disasters such as Hurricane Helene and the California wildfires, when traditional communication infrastructure failed, amateur radio operators provided vital communication links. They relayed messages between emergency responders, government agencies, and affected communities. They also passed "health and welfare" messages *when the local and civilian communications backbone was completely destroyed and incapable of operating*.

ii. WX4NHC is the amateur radio station co-located inside the National Hurricane Center in Florida. The station is valued by the NHC and has been providing public service support for over 45 years helping save lives by facilitating emergency communications during hurricanes and other severe weather events. Our Federal government sees value in amateur radio, and supports WX4NHC. Also, Shared Resources (SHARES) is a

program administered by the Department of Homeland Security's National Coordinating Center for Communications. It is a program administered by the Cybersecurity Division, Cybersecurity and Infrastructure Security Agency within DHS, which integrates amateur radio operators who provide emergency communications when traditional communication systems are unavailable. Amateurs transmit critical messages related to leadership, safety, law and order, finance, and public health during emergencies.

iii. The unspeakable scenario is a man-made disaster such as when an act of terrorism removes critical key assets, including our vital governmental and commercial communications nodes. Amateur radio operators may be one of the few options for providing emergency response communications. Most amateur radio emergency response elements have generators, antennas, radios, computers, etc. and may be the only communications modes available to Federal, state, tribal, and community emergency management officials. Many non-ARES amateurs will likely join communications support operations using their home equipment.

iv. However today, thousands of amateurs may not be able to provide support because homeowner restrictive covenants prevent the installation and use of certain antenna systems.

e. Not to over-play the significance of elements of our amateur radio service, but our nation may be at risk for losing a great national capability because non-Federal governmental entities restrict antennas within their domain; thereby limiting the number of active, trained amateur radio operators. Perhaps licensees in those antenna restricted areas have no equipment now because of the restrictions, and therefore are not able to join emergency networks.

3. *47 CFR § 97.9*: Amateur radio licenses grants two privileges.

a. The Commission simultaneously grants *two* types of amateur radio licenses. The licenses are legal documents that establish the legal foundation of the amateur radio service as promulgated through provisions contained in 47 USC and 47 CFR.

b. The amateur radio *licenses*[4] granted by the Commission, generally, are permissions granted by a *qualified authority* permitting a licensee to do something that would otherwise be prohibited.

c. *Operator license* (*47 CFR § 97.9*). The person named in the operator license grant is authorized to be the control operator of an amateur station with the privileges authorized to the operator class[5] specified on the license grant. The

[4] https://www.law.cornell.edu/wex/license
[5] Operator classes: Novice, Technician, General, Advanced, and Amateur Extra.

control operator responsible for ensuring the station operates in compliance with the Commission's rules and regulations.

d. *Station license* (*47 CFR § 97.5*). The station apparatus must be under the physical control of a person named in an amateur station license grant, i.e. the operator licensee. It is now established the Commission grants duly licensed amateur radio operators the privilege and right to establish amateur stations[6] and conduct amateur radio operations within 50 kilometers of the Earth's surface. Although impracticable, amateurs may establish antenna towers or poles, el al, as high as sound engineering and safety standards allow; usually far below the 50 kilometer maximum. Many amateur radio towers, unrestricted by non-Federal encumbrances, are typically between 40 and 125 feet high, more or less. Certain antennas such for VHF and UHF operations may be mounted on television towers, cell phone tower, water tanks, and other structures sometimes as high as 1,000 feet or more for example.

4. Preserving amateur radio operator and station privileges (above) is critical in maintaining a cadre of trained amateur licensees with operational equipment and stations ready to go on-the-air anytime. Occasionally, traditional normal day-to-day enjoyment may shift focus instantly to provide support to emergency operations from home stations or from emergency operations centers.

[6] Amateur station. A station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications. (§97.3(a)(5)

a. *That is the hidden value of the amateur radio service* – the ability to immediately transition from routine day-to-day communicating to providing emergency support. Amateur radio support is *critical* when state and local communications capabilities are destroyed, as we recently witnessed. Most amateurs supporting Federal or state emergency management agencies are trained and certified in their jobs, so ***they show up ready to support***.

V. Interference from Homeowner's Associations and CC&Rs – Overview.

1. Homeowners' associations[7] (HOAs) are the governing body of many common interest communities, such as subdivisions, who manage the common areas and interests of the community. When a person buys or rents property in said community or subdivision, often there is a legal servitude on the property that binds the occupant of the property, to follow the covenants, conditions, and restrictions (CC&Rs) that govern the property in the community. Each homeowner must follow these guidelines and pay the fees of the HOA.

2. Further, there are HOAs within a larger HOA**.** This setup is common in large planned communities that are divided into sections or neighborhoods, each with its own *sub-association.* These sub-associations operate under the umbrella of a *master association*,

[7] https://www.law.cornell.edu/wex/homeowners%27_associations_(hoas)

which oversees the entire community. Homeowners typically pay dues to both the master association and their respective sub-association.

3. The number of HOAs are rapidly growing and the number of people they "manage" is rapidly increasing.

    a. As of early 2025, there are approximately 77.1 million people living in 373,000 HOAs in the United States[8]. They manage approximately 40 million US households. This represents about 33% of homeowners in the United States. These communities include single-family homes, townhouses, and condominiums.

    b. In 2020, there were over approximately 350,000 HOAs managing about 74.1 million residents or about 26% of our population.

    c. In 2015, there were over approximately 311,000 HOAs managing about 68 million residents or about 22% of our population.

    d. In 2010, there were over approximately 222,500 HOAs managing about 62 million residents or about 22% of our population.

[8] Not all HOAs are licensed by the states and their regulation varies by state. It is difficult to determine the exact number, but there are a number of HOAs probably operating outside the scope of state law and restricting amateur antennas.

4. It is obvious the number of HOAs is rapidly increasing and more and more of the amateur radio operator population are subject to their CC&R-antenna restrictions.

5. *Important Consequence*. Therefore, it is essential to consider there are about 700,000 amateur radio licensees in the United States. Given that approximately 77.1 million residents live in HOAs and like-type community associations, a significant number of amateur radio operators likely reside in antenna restricted areas and suffer harm from legally-deficient CC&R contracts. *As the number of HOAs increase, so too will be the number of licensees increase who are subject to HOA antenna restrictions*.

VI. HOA One-Sided Contracts.

1. *Opting-out.* When one purchases property in such community, opting-out of the authority of the HOA is mostly impermissible. CC&Rs determine how broad of authority HOAs have, emplace limitations, and restrictions.

2. *Violating HOA antenna restrictions*. HOAs typically issue warnings, levy fines, or take legal action to force compliance. These types of enforcement actions illustrate HOA power, and establish that HOAs act like a quasi-government[9]. On the other hand, some Federal and state laws may prevent the enforcement of restrictions by HOAs when those provisions become *unconscionable* or *against public policy or law*. For example, Federal

[9] In the Davis-Stirling Act, the California Courts of Appeal found HOAs as a *quasi-government entity* paralleling in almost every case the powers, duties, and responsibilities of a municipal government. See paragraph VII (1) below.

laws prohibit HOAs from banning homeowners from having a service animal. Accordingly, there is precedence for the Commission to preserve provisions of Part 97 over HOA CC&Rs, not that precedence is needed.

3. *Contracts*. CC&Rs are considered a type of *contract*. They are part of the legal agreements that govern the use *of properties within an HOA or a condominium association, et al and one agrees to abide* by these rules which are legally binding and enforceable. Failure to comply with CC&Rs can result in penalties, fines, or legal action.

    a. These CC&R contracts are germane and the focus of this Petition. CC&Rs directly relate to the matter at hand and have significant bearing on the associated legal issues.

VII. Motive to Control Domain Using Legally-Deficient and One-Sided Contracts.

1. *Motive and intent*. Although HOA CC&Rs are primarily intended to establish structure, governance, and guidelines for the community, they do exert control over individual homeowners, and they may impose many restrictions. However, the HOA *intent* is to create stringent and legally binding contracts for all owners, and their *motive* is to control their domain.

    a. *Davis-Sterling*. As the California Court of Appeal ruled in *Davis-Sterling*, "HOAs are de facto mini-governments; and the association in almost every case provides

utility services, road maintenance, street and common area lighting, refuse removal, and in some cases provides security services", etc. Some HOAs have very particular guidelines and dictate house color schemes and acceptable flowers and trees, and require cars to always be in a garage.

i. The Petitioner does not disagree with the goodness of those HOA provisions, and recognizes the meritorious service they provide to our communities. But the point is HOA CC&Rs are binding contracts giving the associations ***great power*** to control neighborhoods.

ii. Sometimes HOAs overstep their powers.

iii. Further and germane to this Petition, the Court opined in Davis-Stirling "CC&Rs are the constitution of the HOA and are legally binding upon residents to the extent that it ***does not conflict with state or federal law***.

iv. In this regard, certain terms found in HOAs and associated CC&Rs are found to be *unconscionable* and *counter to Federal law*.

2. *Unconscionable*. Such CC&R contracts are unfair and oppressive to licensees, and likely some CCRs were intentionally drafted in that manner to preserve community aesthetics or maintain property values, etc. It is apparent that most HOAs and CC&Rs *unfairly* ignore the rights and privileges granted to amateur operators in Part 97. HOAs

certainly are reminded of Part 97 rights as licensees file paperwork requesting permission to install antenna systems, are forced to pay fines, or file legal action against the HOA.

a. Further, many HOA CC&R staffs, in this regard, are often *unfair* and *unjust* in their consideration toward antenna issues.

3. *Amateur licensee's rights come into conflict over antenna restrictions*. Most HOAs likely follow a legally-deficient[10] rule book, and therefore CC&R provisions *unfairly* and *prejudicially* apply faulty legal constraints on amateurs. Some HOA anti-amateur practices include harassment or creating a hostile environment. These actions may go beyond mere unfairness and may reach a level of severity that makes them unjust and perhaps abusive, in some cases. Most amateurs concede to pressure and remove offending antennas and other apparatuses. Other amateurs take their issues before a court, but usually lose their cases, likely because most litigators are unfamiliar with communications law, or for other reasons. Many amateurs wanting to preserve their Part 97 rights move out of HOA domains. Some disgruntled licensees sell their radio equipment and quit amateur radio, which is a great loss to the Amateur Radio Service.

4. *No CC&R Contract.* Furthermore, antenna restrictions have been placed on licensees by community associations *without* CC&R contracts. These were unfair and arbitrary

[10] Constitutional violation – equal protection under the law

confrontations between licensees and associations who were demanding the removal of antennas and antenna support systems.

5. Therefore, such a CC&R contract is most likely to be found *unconscionable* because of the unfair bargaining and unfair terms.

    a. *Unfair bargaining*. Amateur radio operators seldom receive fair treatment when up against an HOA using a legally-deficient rule book or CC&R. The amateur has no choice after negations fail: either remove the "offending" antenna system or move. For example in a similar regard, an amateur radio operator and family desire to move into a new housing development having an HOA and CC&R which restricts amateur antennas. The family loves the new house, and there are few housing alternatives in their urban or suburban area because of housing shortages, etc., typical of today's housing market. Therefore, the amateur operator signs the house purchase paperwork which includes a CC&R with antenna restrictions. The licensee abides by the restrictions and sells amateur radio equipment.

    b. *Substantive unconscionability*. The CC&R contract may include a clause that states if the house buyer installs an amateur radio antenna, the HOA can impose a fine or an exorbitant fee, or take other action for violation of the CC&R.

c. In the scenario above, which is reality in many cases, the terms of the CC&R are one-sided and so harsh that they "shock the conscience." The amateur radio operator has *little bargaining power* and is forced to accept these unfair terms due to the urgent need for housing, illustrated in the example above.

6. *Unfair Treatment Under the Law*. In regards to this Petition, certain licensees are subject discrimination and sometimes harassment from HOAs because the presence of their antenna system fractures neighborhood rules. Although HOA domains may include other structures spoiling the neighborhood aesthetics such as cell phone towers, dead trees, over grown trees, untrimmed trees, tall grass, overgrown shrubbery, abandoned structures, power line poles and power lines, TV cables, other utility wires, various signs, high traffic areas, et al; *still those natural and man-made things co-exist in the skyline with amateur antenna systems*.

a. *Co-Exist In The Skyline*. It is recognized that various utilities are exempt from CC&Rs, local ordinances, etc., but the fact remains that those utility poles, towers, lines, boxes, et al located within the HOA still pollute the aesthetics of the HOA domain. They co-exist with amateur antenna systems.

7. *Aesthetics*. Aesthetics are critical subjective judgements dealing with things that are visually appealing, a concept which the Petitioner does not argue. Having said that, it can be argued that amateur radio antenna systems also contribute to the character of the HOA domain. It can be said that *many amateur antenna systems blend in with the*

environment, and some may be below the peak or high point of various natural and man-made structures within the HOA domain.

VIII. **No Legal Basis for Antenna Restrictions.**

1. Throughout the Petitioner's literature reviews of facts bearing on the problem at hand, no reason or rationale or legal position may be found justifying the antenna restrictions placed on licensees by HOAs.

    a. Discrimination. Seeking to control various things in their domain, many HOA CC&Rs discriminate against licensees. Although duly licensed by the Commission, amateur radio operators are treated unfairly, sometimes being coerced by threats of fines and pressure into accepting CC&R conditions.

        i. It is known by the management of many HOAs that various utility providers, et al are protected by local ordinances and state laws. It is further known by some HOA management they can help control neighborhood aesthetics and property values by including amateur radio antenna restrictions into CC&R.

        ii. It is likely some HOA management are well aware of amateur radio privileges granted in Part 97 as evidence by many local disputes and court actions in which they joined.

iii. It is likely HOA management continued antenna restrictions because primarily of two realities: 1: HOAs won CC&R contract disputes. And *most importantly* 2: when ruling, the Commission opined not to circumvent community rules and take decision-making authority away from community association homeowners. That opened the way for HOAs to continue unfair treatment.

b. Respectfully, the Commission's rulings gave HOAs power over Federal law (CFRs) and gave them more monopoly-like power.

2. Accordingly, many HOA CC&Rs were drafted by attorneys who realized, based on prior litigation, the Commission would not step in and protect licensee's Part 97 privileges. In this regard, HOAs *unfairly discriminated* against licensees by targeting and treating them unfavorably because of the now-protected status of the HOA.

3. <u>*Harassment*</u>. It is not an exaggeration to say many licensees experienced unwelcome treatment from HOAs which created hostile environments between the two parties. Various licensees received notices and warnings and threats of litigation. Other licensees were threatened or paid fines.

4. *Bias in Legal Proceedings*. Licensees receive unfair treatment throughout the legal system because their licensed legal representatives failed to investigate and probe the law and find the main reason behind this complex issue of antenna restrictions.

   a. ***Critical Finding by Petitioner - Ignorantia Legis Non Excusat***. It should be highly apparent to one skilled in the art of law, that contract law does not have precedence over Federal statutory or regulatory law. Obviously that has not been apparent, and consequentially licensees had both inadequate legal representation and unfair treatment in court because both litigators and courts failed to discern the difference between contract law and Federal law. Both litigators and courts were *"*ignorant of the law*"* because of their lack of knowledge or awareness or distinction of the conflict of jurisdiction and conflict of law previously discussed. Therefore, the "ignorance of the law is no excuse" or *ignorantia legis non excusat* is not an excuse. This means the integrity of judicial proceedings lead to unjust outcomes as related to this Petition. Therefore, there was bias in proceedings.

IX. **Some HOAs are Monopoly-like Entities and Create Monopolistic Conditions**.

1. Many HOAs have certain characteristics that can make them feel monopolistic to homeowners.

a. *Exclusive Control*: Some HOAs have exclusive control over certain aspects of a community, such as the maintenance of common areas, enforcement of specific rules, and architectural standards. Homeowners within the community are required to comply with these rules and pay dues. Violations of antenna restrictions may, in this case, result in fines or other enforcement measures.

b. *Limited Alternatives:* Homeowners who buy or rent property within an HOA are usually bound by its rules and regulations with limited options to opt out of CC&R obligations.

2. It must be said, importantly, HOAs are generally legal and regulated by state laws. However, some argue that HOAs should be subject to antitrust laws to prevent unfair practices, but that argument of not within the scope of this Petition. However it does appear HOAs have extreme control over their neighborhoods.

3. The 1824 *Gibbons v. Ogden* Supreme Court decision shows similarities between the fictional "FCC licensee v. HOA" as an example. Illustratively:

> *Gibbons v. Ogden*: Details – incorporated by reference. The 1824 Supreme Court held that the power to regulate interstate commerce, granted to Congress by the Commerce Clause of the Constitution, was exclusive and superseded state laws.

a. In this modern illustration, an "FCC licensee" holds a Federal license to operate; and the "HOA" holds from his state government an exclusive license for

managing neighborhoods. Court arguments center on whether the state could grant to HOAs an exclusive license to manage neighborhoods without conflicting with a Federal license. The case goes to the Supreme Court which held that the power to regulate the Amateur Radio Service is grant to the FCC by the Congress of the United States and, was exclusive and superseded state laws. Ergo, CC&R antenna restrictions remedied. (This is illustrative only.)

b. *Gibbons v. Ogden* is pertinent because it illustrates that the Commerce Clause which has been a significant source of Federal power and has been the basis for numerous laws and regulations affecting various aspects of the economy and society. The Commerce Clause may be pertinent in the matter of the Petitioner.

X. **Disproving the Protected Status Assumption.**

1. Legal history behind said problem illustrates that HOAs assume power by way of some sort of *protected status* which "legally" safeguards them from violating certain provisions of the law. Yes, antenna restrictions may be part of an HOA contract, but they are partially established to maintain neighborhood aesthetics. Perhaps the HOA assumed power and "protected status" comes from the many failed litigation attempts, which furthers their power and control, thereby jeopardizing the integrity of judicial proceedings and leading to unjust outcomes as related to this Petition. Therefore, there was unwitting bias in proceedings. However, *ignorantia legis non excusat* or *"*ignorant of the law*"* is not excuse for usurping licensee privileges.

2. *Community control*. Antenna restrictions contained in HOA CC&Rs attempt to gain community control through aesthetic zoning or restrictive covenants.

3. *Neighborhood aesthetics – No Protected Status.* This Petition demonstrates HOA antenna restrictions are a matter of maintaining property value and neighborhood aesthetics, among other things. Neighborhood aesthetics themselves are not considered a form of protected status under anti-discrimination laws. However, regulations and deed restrictions related to neighborhood aesthetics can sometimes intersect with legal protections.

4. *Deed Restrictions or Restrictive Covenants.* These are provisions in property deeds that can regulate the appearance and use of properties within a neighborhood to maintain certain aesthetic standards. They are legally binding and enforceable ***except*** when they conflict with state or Federal law as ruled in *Davis-Sterling,* et al.

5. *Local Zoning.* Local zoning regulations may include aesthetic zoning, which focuses on maintaining the visual appearance of a community. These regulations can dictate aspects like building materials, colors, landscaping, and architectural styles. They are legally binding and enforceable ***except*** when they conflict with state or Federal law as ruled in *Davis-Sterling,* et al

6. *HOA CC&R*. As demonstrated, HOAs enforce aesthetic guidelines to preserve property values and the overall look of the community. They are legally binding and enforceable ***except*** when they conflict with state or Federal law as ruled in *Davis-Sterling, et al.*

7. *No Protected Statues*. While these regulations are not forms of protected status, they must comply with broader anti-discrimination laws. For example, aesthetic regulations can not be used to discriminate against amateur radio operators in the employment of their stations.

XI. Primacy of 47 CFR 97 Over State Law and Homeowner's Association Contracts

Appendix 1, *Primacy of 47 CFR 97 Over State Law or Homeowner's Association Rules*, establishes there is no doubt 47 CFR Part 97 carries the fully force and effect of Federal law, and is superior over HOA CC&R promulgations; taking precedence over lower authority laws and take precedence over private agreements like CC&Rs, in this case. Further, it proves homeowner's associations, quasi-governmental entities, and other non-Federal government entities have no legitimate power or right to make decisions, enforce laws or by-laws, and command compliance in matters conflicting with Federal law. Said entities have no *actual authority*, *apparent authority*, *express authority*, or *implied authority* over Federal law.

XII. PRB-1 Observations and Presumptions.

1. *Overarching and Extremely Important and Relevant at All Times*: The Commission's regulations established in CFRs are Federal laws and constitute the "supreme Law of

the Land" as related to communications law. The Commission's rules represent the full force and effect of Federal law, and are *superior over HOA CC&R contracts*, taking precedence over lower authority laws and take precedence over private agreements like CC&Rs, in this case.

2. *PRB-1*. Significantly, in 1985[11] the "Commission adopted a *Memorandum Opinion and Order*, establishing a policy of limited preemption of state and local regulation of amateur station facilities, including antennas and support structures.[12] This limited preemption policy, which was later codified at Section § 97.15(b) of the Commission's rules, and requires state and local regulations be crafted to reasonably accommodate amateur station antenna structures."[13]

3. PRB-1 preempts local ordinances that unreasonably restrict amateur radio communications. It specifies *local governments* must reasonably accommodate amateur radio installations, but they can still impose restrictions for height, safety, and aesthetics. Point of fact: PRB-1 *does not preempt* private covenants, conditions, and restrictions.

[11] And clarified in November 1999 further explaining the balance between Federal preemption and local regulation.
[12] See Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order,* PRB-1, 101 FCC 2d 952 (1985) (*PRB-1*).
[13] 47 C.F.R. § 97.15(b).

a. Accordingly, PRB-1 more or less introduces amateur radio antenna allowance considerations into local zoning laws and regulations. Those measures may have benefit for certain licensees, and is a significant ruling of the Commission.

b. The Petitioner concurs with the Commission's order; but recognizes *legally-deficient* CC&R antenna restrictions still apply to licensees in such environments. These legally-deficiency contract issues are addressed throughout this Petition.

c. Further and essential to the Petitioner's argument, there exists conflicts of legal jurisdiction or conflicts of laws because the legal issue involves multiple jurisdictions with conflicting laws. By that, we see state or local courts ruling on *contractual* matters, and rightly so. But the actual problem relates to the enforcement of *Federally* granted allowances to licensees under § 97.15 Station antenna structures[14], which is a Federal matter and under the purview of the Commission.

d. *Limited Preemption Policy Based on Faulty Judgement*. Further, "in PRB-1, the Commission expressly decided not to extend its limited preemption policy to covenants, conditions and restrictions contained in deeds or bylaws of homeowner and condominium associations, reasoning that '[s]uch agreements are *voluntarily entered into* by the buyer or tenant when the agreement is executed and do not usually concern the Commission."[15] The Commission further stressed that

[14] And Part 97 in general
[15] *PRB-1,* 101 FCC 2d at 960 n.6.

"[*p*]*urchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.*"[16]

e. *In de Facto*. Respectfully, in this regard, the Commission unwittingly ruled on specific restrictions "contained in deeds or bylaws of homeowner and condominium associations," and not on private contracts in general. The Commission *in de facto* opined in a private contractual matter.

i. Additionally, in a review of previous decisions related to this issue, we find the Commission always reaffirms its long-standing position that it should not interfere with community association covenants, which the Commission recognizes as private contractual agreements under state law. The Petitioner applauds that position. Nonetheless the Commission violated its own principles by telling amateurs to relocate, which *may be outside the scope of its authority under regulatory law.* Regulatory law generally does not compel people to move away from certain areas.

1. In that regard, the Commission likely circumvented community rules and temporarily took decision-making authority away from community association homeowners, thus degrading the underlying concept of community association governance. The Commission supported CCR's by telling amateurs to relocate.

[16] *Id*. at 955 ¶ 9.

ii. In *PRB-1*, the Commission ruled against the other party to the private contractual agreement; the amateur radio operator / property owner.

XIII. Conflict between Contract and Regulatory Law.

In addition to findings above, these points are pertinent:

1. *Irrelevant and Unjust*. Respectfully, the Petitioner submits the Commission's PRB-1 decision that CC&R agreements which are "voluntarily entered into … and purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere," are *irrelevant* and *unjust*.

    a. *Irrelevant.* Regarding PRB-1, "… Commission further stressed that "[*p]urchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.*" That statement does not demonstrate pertinence to the antenna restriction issue. Providing licensees with domicile options does not directly relate to the legal issues related to the issue.

i. Respectfully, the statement is perhaps outside the scope of the Commission's regulatory area of law and perhaps should be excluded in a Federal government legal decision.

b. <u>*Unjust*</u>. The Petitioner argues that ruling (*free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere)* is speculative in nature because the decision seems based on conjecture or assumptions rather than concrete evidence. The Petitioner sees no solid foundation for that decision, which ultimately lead to an unjust outcome.

c. Respectfully, in that regard, the Commission failed to consider the legal basis and validity of CC&Rs and homeowner and condominium association agreements or contracts. Concur with the Commission that such agreements do not usually concern the Commission; however, the Petitioner opines that said agreements should be given a great degree of concern because they are legally-defective. The Commission reasoned that said agreements are voluntarily entered into by the buyer or tenant when the agreement is executed. The Commission further stressed that "[p]urchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere."

i. The Petitioner opines contractual agreements are outside the scope of the Commission's authority and causes conflict between contract law and Federal regulatory law. Thusly, such rulings are unjust to litigants.

ii. *Without CC&R contracts*. Also, the Commission must consider antenna restrictions are placed on licensees by community associations *without CC&R contracts*. HOA representatives confront licensees verbally or in letter or email, instructing removal of said amateur antenna. These are unfair and unjust and arbitrary confrontations between associations and licensees, where associations demand the removal of antennas and antenna systems.

2. Further, the Petitioner incorporates by reference the Commission's Order RM-8763 and all associated communications law cited. Adopted in September 2002, the Order dismisses the pre-2002 Petition by W. Lee McVey for "modification and clarification of policies and procedures governing the siting and maintenance of amateur radio antennas and support structures" on the basis of PRB-1. Once again, McVey and others argued issues outside the scope of the Commission and their petitions were denied. Having said that, McVey's pleading is relevant on how state and local regulations interact with Federal law related to said on amateur radio antennas; but those lower level government issues are not germane to this Petition; but McVey's overall rejection impacts on the issue at hand.

a. The outcome of McVey, in this case, demonstrated the Commission realized the nature of private contracts such as CC&Rs and determined them to be outside the scope; but the Commission was invisible to the PRB-1, et al impact, by unwittingly ruling in favor of HOA contracts by instructing or suggesting licensees change domicile.

3. *Long-time Problem not Overcome*.

a. The Petitioner concurs with the Commission's rules requiring state and local regulations be crafted to reasonably accommodate amateur station antenna structures; however, that was a compromise decision since those provisions are within Part 97.

b. Grievously, PRB-1 expressly decided not to extend its limited preemption ruling to relevant covenants, conditions and restrictions contained in deeds or bylaws of homeowner and condominium associations.

4. At Appendix 2, please see various rulings or determinations related to overcoming amateur radio restrictions. Note these cases were unsuccessful getting relief but they assist in describing judicial history of failed attempts, which illustrates partly, why the problem is complex.

XIV. No Other Available Methods to Transmit Radio Signals.

Let it be known, there are no other available methods to transmit amateur radio service communications that do not require an antenna installation at a residence. Having said that, there are costly subscription services for operating amateur stations remotely; but that is not the issue. From an amateur's home, under the fundamental laws of electrical engineering, antennas are required to transmit and receive radio signals. CC&Rs prevent amateur radio operators from pursuing the basis and purpose of the amateur service, as illustrated.

XV. Harm to Amateur Radio Operators.

Said antenna restrictions not only bring harm to amateur radio operators, they also bring harm to our Nation and to the rule of law. In abbreviated format – harms:

1. To the Nation and Our Communities.

    a. Our Nation may be at risk for losing a great national capability and supply of *trained amateur radio operators* ready to support emergency operations and to continue their unique ability to enhance international goodwill per § 97.1.

    b. The number of trained and ready licensees is decreasing as the expanding influence of HOAs and antenna restrictions spreads wider throughout our Nation putting more and more licensees off-the-air.

2. To the Rule of Law.

   a. It is a fundamental principle of the U.S. legal system that Federal law takes precedence over any conflicting state law, local ordinance, or private agreement. This principle is derived from the Supremacy Clause of the United States Constitution. CC&R contracts and similar instruments violate that principle, and that infraction brings harm to our Nation's legal system.

   b. *Ignorantia Legis Non Excusat*. Both litigators and courts were *"*ignorant of the law*"* because of their lack of knowledge or awareness or distinction of the conflict of jurisdiction and conflict of law; and the fundamental principle of the U.S. legal system described immediately above.

   c. Most HOA contracts containing antenna restrictions are likely legally-deficient.

   d. Most CC&R contracts remain in force today, usurping the power and authority of the United States Government. Non-Federal government entities have no legitimate power or right to make decisions, enforce laws or by-laws, and command compliance in matters conflicting with Federal law. Said entities have no *actual authority*, *apparent authority*, *express authority*, or *implied authority* over Federal law.

3. To Amateur Radio Operators and the Amateur Radio Service.

    a. No Legal Basis for HOA and other entity antenna restrictions.

    b. Many CC&R-affected amateurs can not operate their amateur stations and enjoy their operator and station license granted in Part 97. HOA CC&Rs violate these privileges.

    c. When faced with antenna restrictions, some disgruntled licensees sell their radio equipment and quit amateur radio, which is a great loss to the Amateur Radio Service.

    d. HOAs discriminate against licensees. HOA domains themselves may include many other natural and man-made structures spoiling the neighborhood aesthetics; still those natural and man-made things co-exist in the skyline with amateur antenna systems.

    e. As the number of HOAs increases, more and more licenses will be affected by deficient-CC&R contracts and will likely be forced to cease operations or be fined or penalized or otherwise.

f. Many CC&R are one-sided and so harsh that they "shock the conscience." Amateur radio operators have *little bargaining power* and are forced to accept these unfair terms due to the need for housing.

g. Many HOAs are monopoly-like entities and create monopolistic conditions, subjecting licensees to harsh fines, and limiting alternatives for antenna usage.

h. PRB-1 does not preempt private covenants, conditions, and restrictions.

XVI. The Justification for Amending Part 97 of the Commission's Amateur Radio Service Rules to Overcome HOA et al Amateur Radio Antenna Restrictions.

To reverse harms identified above to preserve and enjoy and exercise all rights granted under Part 97.

XVII. How The Interests Of The Petitioner Will Be Affected.

1. Prohibiting said antenna restrictions will enable all licensees to exercise all rights granted under Part 97.

2. It reestablishes *primacy* of 47 CFR 97 over homeowner's association rules, contracts, et al, thereby allowing all licensees to exercise all rights granted under Part 97.

3. More amateur radio operators will be on-the-air daily, and more operators and their stations will be ready and available to support emergency support operations. Further, they will be available to temporarily replace the local communications backbone in times of natural disasters resulting in overwhelming, total destruction such as what we saw recently in North Carolina and California, or what we could see in future manmade disasters.

Respectfully submitted,

By: *Danny G. Jamison*
(my facsimile signature)

Danny G. Jamison
Amateur Radio Operator, AH6FX

12600 Garman Drive
Nokesville, Virginia 20181

571-215-0002
Email: djami.djami@verizon.net
March 19, 2025

Appendix 1
Primacy of 47 CFR 97 Over State Law or Homeowner's Association Rules, et al.

I. Relevant Facts and Circumstances Bearing on the Problem:

a. The authority of the Commission over non-Federal or quasi-governmental organizations stems from power and responsibility based on a hierarchy of powers.

b. Supremacy Clause of the United States Constitution.

i. It is a fundamental principle of the U.S. legal system that Federal law takes precedence over any conflicting state law, local ordinance, or private agreement. This principle is derived from the Supremacy Clause of the United States Constitution, which is found in Article VI, Clause 2 which states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

c. United States Congress Makes Laws.

i. The portion of the United States Constitution that gives Congress the right to make laws is found in Article I, Section 8, also known as the *Enumerated Powers* or the *Necessary and Proper Clau**se***. Here is the relevant text:

> "The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

ii. This clause grants Congress the authority to enact laws that are necessary and proper for executing its enumerated powers and other powers granted by the Constitution.

d. Congress of the United States Delegates Rulemaking Authority.

i. The authority for Federal departments to establish regulations which are codified in the Code of Federal Regulations comes from *enabling statutes* passed by Congress. These statutes *delegate rulemaking authority* to

Federal agencies, allowing them to create regulations necessary to implement and enforce the laws enacted by Congress. In this regard, CFRs contains the *rules and regulations* issued by Federal agencies based on the authority granted by statutes in the USC. It represents *regulatory law*.

ii. Therefore, Congress using its *statutory powers*[17] issued 47 U.S. Code § 151 transferring *regulatory powers* to the Commission to govern the Amateur Radio Service, which it does under the provisions of 47 Code of Federal Regulations, Part 97.

e. Federal Rulemaking by Federal Departments.

i. Therefore rulemaking authority granted to Federal agencies implement statutory programs. The *regulations* issued pursuant to this authority carry the force and effect of Federal law.

1. "A valid legislative rule is binding upon all persons, and on the courts, to the same extent as a Congressional statute. When Congress delegates rulemaking authority to an agency, and the

[17] The US Code or *statutory law* has precedence over the CFR (regulatory law). Federal agencies create regulations in the CFR to implement and enforce the statutes in the USC. If a conflict arises between a statute in the USC and a regulation in the CFR, the statute in the USC takes precedence.

agency adopts legislative rules, the agency stands in the place of Congress and makes law." *National Latino Media Coalition v. Federal Communications Commission, 816 F.2d 785, 788 (D.C. Cir. 1987)*[18, 19].

f. Point of Fact.

i. There is no doubt 47 CFR Part 97 carries the fully force and effect of Federal law, and is superior over HOA CC&R promulgations, taking precedence over lower authority laws and take precedence over private agreements like CC&Rs and contracts, in this case.

II. Constitutionality of Homeowner's Rules and CC&R Documents in Restricting Federal Powers.

None. Per above, homeowner's associations, quasi-governmental entities, and other non-Federal government entities have no legitimate power or right to make decisions, enforce laws or by-laws, and command obedience in matters conflicting with Federal law. Said entities have no *actual authority*, *apparent authority*, *express authority*, or *implied authority* over Federal law.

[18] https://crsreports.congress.gov/product/pdf/IF/IF10003
[19] Congressional Research Service, An Overview of Federal Regulations and the Rulemaking Process, March 19, 2021

Appendix 2
Selected Legal Proceedings Related to Rule Making and Amateur Restrictions

Supporting the aforementioned, this Appendix supplements the discussion of legal proceedings related to this Petition.

1. *47 U.S. Code § 151 - The Commission governs the Amateur Radio Service*. Congress using its *statutory powers*[20] issued *47 U.S. Code § 151* transferring *regulatory powers* to the Commission to govern the Amateur Radio Service, which it does under the provisions of 47 Code of Federal Regulations, Part 97.

2. *47 CFR § 97.9*: Amateur radio licenses grants two privileges.

3. 47 CFR §97.5(a) (1) allows licensees to operate from any place that is *Within 50 km of the Earth's surface and at a place where the amateur service is regulated by the FCC.* HOA CC&Rs violate this privilege by restricting operations within their domain.

[20] The US Code or *statutory law* has precedence over the CFR (regulatory law). Federal agencies create regulations in the CFR to implement and enforce the statutes in the USC. If a conflict arises between a statute in the USC and a regulation in the CFR, the statute in the USC takes precedence.

4. *Case law. Gibbons v. Ogden*: The 1824 Supreme Court held that the power to regulate interstate commerce, granted to Congress by the Commerce Clause of the Constitution, was exclusive and superseded state laws.

5. *Case law*. The California Court of Appeal ruled in *Davis-Sterling*, "HOAs are de facto mini-governments." Further, the Court opined "CC&Rs are the constitution of the HOA and are legally binding upon residents to the extent that it *does not conflict with state or federal law.*

6. Commission's Order RM-8763, September 2002, dismisses the pre-2002 Petition by W. Lee McVey for "modification and clarification of policies and procedures governing the siting and maintenance of amateur radio antennas and support structures" on the basis of PRB-1. Importantly, the outcome of McVey demonstrated, in part, the Commission realized the nature of private contracts such as CC&Rs and determined them to be outside the scope; but the Commission was invisible to the PRB-1 impact, by unwittingly ruling in favor of HOA contracts by instructing or suggesting amateur change domicile.

7. *Equal Protection of Under the Law.* A Constitutional principle ensuring all individuals are treated equally by the law and that no person or group is subjected to discrimination by the government; or quasi-government as in the case of licensees.

8. *Over-the-Air Reception Devices (OTARD) Rule*. The Commission established rules OTARD which protect the rights of property owners and tenants to install, maintain, or use antennas to receive video programming and certain fixed wireless signals. ***This is not amateur radio though***. The OTARD rule has been used by the ARRL several times, and each time the Commission rejected its relevance because it is not amateur radio-concerned. The Petitioner supports the Commission's ruling.

Appendix 3

Part 97, Subpart D of the Amateur Service Rules is amended at Sections 97.3 establishing new definitions, and at 97.15 allowing antenna structures, and suggesting to amend 47 USC §151 as indicated below:

§ 97.3 - Definitions.

(1) ***Amateur operator***. No change – text eliminated for brevity

(2) ***Amateur radio antenna systems***. A system of various transmitting and receiving antennas of all types including wooden, fiberglass, plastic, metallic, et al antenna masts, towers, poles; control boxes, cables, feedlines, and other antenna supporting means and apparatuses.

~~(2)~~ (3) ***Amateur radio service***. No change – This and subsequent subparagraphs are renumbered.

***

(22) ***Frequency coordinator***. No change – text eliminated for brevity.

(23) ***Generally Accepted Engineering Practices***. Standard methods, techniques, and procedures that are widely recognized and used by engineers in their professional work.

~~(23)~~ (24) ***Harmful interference***. No change – This and subsequent subparagraphs are renumbered.

***

§ 97.15 - Station antenna structures.

(a) Amateur radio antenna system structure installation and operation shall not be restricted by any form of private agreements such as contracts, neighborhood or association covenants, conditions, or restrictions.

(i) Where appropriate, licensees may consider, but not required, to employ fold over towers, tilt over towers, telescopic towers or poles, or similar devices when station is not in operation to maintain community aesthetics.

(ii) Where appropriate, licensees may consider, but not required, to camouflage towers and poles with paint or other suitable means to maintain community aesthetics.

(iii) Amateur radio antenna structures shall observe generally accepted engineering practices, and observe related safety standards.

(iv) Amateur station waiver. Construction permits, including local building permits for antenna tower installation, etc. shall not be required for amateur stations. (47 U.S. Code § 319 - Construction permits)

(~~a~~) (b) Owners of certain antenna … No change – This and subsequent subparagraphs are renumbered.

***

Reference 47 U.S. Code § 151: It is known the Commission is not the proponent for the U.S. Code, but the Petitioner recommends the Commission collaborate with the U.S. House and update the purpose of the Commission and modernize its "mission statement." Such update may include:

47 U.S. Code § 151 - Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio … for the purpose of the national defense, for the purpose of homeland defense and homeland security, for the purpose of cyber communications, for the purpose of space communications, for the purpose of lunar communications, for the purpose of interplanetary communication, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority … there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

***